11978

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. ~~825~~ 179.

THE LOUISVILLE WATER COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED MAY 16, 1896.

(16,301.)

160
15
800

(16,301.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 525.

THE LOUISVILLE WATER COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from Louisville law and equity court	1	1
Order filing petition	1	1
Petition	1	1
Summons	4	3
Marshal's return	5	3
Answer	5	3
Order filing demurrer and setting same for hearing	22	12
Demurrer to petition	22	12
Order withdrawing demurrer and taking motion to dismiss under advisement	22	12
Order overruling demurrer and denying motion to dismiss	23	12
Order that affirmative allegations of answer be taken as controverted of record	23	12
Order assigning case for oral argument	23	12
Order to pass case	23	12
Order assigning case for hearing	23	12
Order taking case under advisement	24	13
Judgment	24	13
Allowance of appeal	24	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 7, 1896.

	Original.	Print.
Evidence for plaintiff	25	13
Testimony of Henry A. Bell	25	13
John T. Tarleton	31	17
Reporter's certificate	33	18
Exhibit H. A. B. No. 1—Assessment, &c	34	18
No. 2—Bill for taxes	37	20
Evidence for defendant	38	21
Testimony of Charles R. Long	38	21
Examiner's certificate	45	25
Clerk's certificate to transcript	46	25
Statement on appeal	46	25
Order for submission of cause	47	26
Judgment	47	26
Opinion	48	26
Writ of error	52	28
Assignment of errors	54	29
Supersedeas bond	56	30
Clerk's certificate	58	31
Citation	59	32
Proof of service of citation	60	32

1 *Pleas.*

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the court of appeals of Kentucky, held at the capitol, in the city of Frankfort, on the 27th day of March A. D. 1896, Judges Joseph H. Lewis, J. H. Hazelrigg, B. L. D. Guffy, and George Du Relle sitting.

Caption.

LOUISVILLE WATER COMPANY, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Be it remembered that heretofore, to wit, on the 11th day of August, A. D. 1893, the appellant, by counsel, filed in the office of the clerk of the Kentucky court of appeals a transcript of record, in words and figures following, to wit:

COMMONWEALTH OF KENTUCKY:

Louisville Law & Equity Court.

COMMONWEALTH OF KENTUCKY & H. A. BELL, Sheriff of Jefferson County, Plaintiff-,
vs.
LOUISVILLE WATER COMPANY, Defendant.

Pleas before the honorable judge of Louisville law & equity court, at the court-house, in Louisville, Jefferson county, Kentucky, on the dates hereinafter mentioned.

Be it known that heretofore, to wit, on January 9, 1891, came plaintiff-, by Helm & Bruce, attorneys, and filed in the office of the clerk of the court aforesaid *its* petition. Said petition is in words and figures following, to wit:

The plaintiffs say that H. A. Bell is and was at the time hereinafter mentioned the duly elected and qualified sheriff of Jefferson county, Kentucky.

The defendant, The Louisville Water Company, is a corporation duly chartered by and organized under the laws of this State, with full power to sue and be sued, to contract and be contracted
2 with, with all the rights specially given by its charter. The plaintiff- say that the defendant is now and was at the time hereinafter stated the owner in fee and possessed of the following property in the city of Louisville and county of Jefferson, to wit, 88.56 acres of land in Edwards' Pond and Gillman's magisterial district of Jefferson county, Ky., near the land of Callahan; also 28.52 acres of land near the lands of F. Wall, Sr.; also 1.28 acres of land near Callahan's tract; also 100 acres and ten acres and 2.49

acres in the Crescent Hill Reservoir tract; also a tract of land purchased of H. A. Myer near the Callahan tract; also two certain lots of land in Jefferson county, the one lying on the east side of Third street between Green and Walnut streets, having a front of Third street of 52½ feet by a depth of 234 feet, the other fronting the west side of an alley between Second and Third and Green and Walnut streets, having a front on said alley of twenty feet by a depth of 120 feet and being lots 12 and 10 of block 41 on city maps on file in the assessor's office of the city of Louisville; also all the pipes and mains running to and from said city and under the streets and alleys of said city; also all the buildings, reservoirs, engines, pumping stations, &c., belonging to the Louisville Water Company.

Said property was for the year 1886 subject to assessment and taxation for State purposes, but notwithstanding it was the duty of the defendant to list said property for State taxation for said year it wholly failed to list the same or any part thereof with the assessor of Jefferson county or with the auditor of public accounts, and the said assessor and said auditor severally omitted to assess said property or any part thereof for said years of any of them.

Plaintiffs say that on the — day of January, 1891, he, as the then acting sheriff aforesaid, in writing reported to George
3 H. Webb, the then clerk of said county court, the fact that the said assessor and said auditor had both omitted to assess said property and reported the same to the county court clerk for assessment. A copy of said report is filed herewith as part hereof, marked "A."

The rate of tax for said year was 51½ cents on the one hundred dollars; the total tax due by the defendant to the Commonwealth on all its property for the year aforesaid in the sum of $12,875, no part of which has been paid.

The said George H. Webb, clerk of the county court aforesaid, entered said assessment on the assessor's book for Jefferson county and certified the same to the auditor of public accounts, and also certified the same to this plaintiff for collection, and said written report of this plaintiff, together with the certificate of said Webb, clerk aforesaid, is filed herewith as part hereof, marked "B."

Plaintiff afterwards, to wit, on the — day of January, 1890, demanded of the defendant said tax, but the said defendant refused to pay the same or any part thereof and persisted in said refusal.

The plaintiffs say that the tax herein mentioned cannot be collected by the ordinary method of distraint and sale, and plaintiff further says that the defendant, The Commonwealth of Kentucky, has a lien on said property by virtue of the statute laws of Kentucky to secure said taxes, and this suit is now brought for the enforcement of that lien and to coerce the payment of said taxes.

Wherefore plaintiffs pray that the defendant be required
4 to answer and show cause, if any it has or can, why it should not be compelled to pay said taxes into this court by a day to be named by the court, or, failing to make said payment at the day named, why the property of the corporation should not be placed in the hands of a receiver of this court to be held, managed,

and controlled by the said receiver until the taxes aforesaid can be paid from the receipts of the defendant, and plaintiffs pray for costs and for all general and equitable relief.

HELM & BRUCE,
Att'ys for Plaintiffs.

And thereupon the clerk issued summons and copy directed to the marshall of the Louisville chancery court; said summons is in words and figures following, to wit:

Louisville Law & Equity Court.

The Commonwealth of Kentucky to the marshal of the Louisville chancery court, Greeting:

We command you to summon Louisville Water Company to answer a petition exhibited against it in our Louisville law & equity court by Commonwealth of Kentucky and H. A. Bell, sheriff of Jefferson county, No. 4186, and warn it that upon failure so to do for twenty days after service hereof, if in Jefferson county, or for thirty days if elsewhere in the State, judgment may be rendered by default or answer compelled or proof taken at petitioner's option, and make due return hereof within sixty days from the date hereof.

Witness John H. Weller, clerk of the Louisville chancery court and *ex officio* clerk Louisville law and equity court, at the courthouse in Louisville, this 9th day of January, 1891.

JOHN H. WELLER, *Clerk*,
By J. G. WALKER, *D. C.*

And the marshal returned said summons with the following endorsement thereon:

Came to hand Jan. 10th, 1891, at 8.30 a. m. Executed on the Louisville Water Co. Jan. 12th, 1891, by delivering a copy of the within summons to Charles R. Long, president thereof.

W. E. MONTZ,
M. L. C. C.,
By C. K. OSBORNE, *D. M.*

Came on the 13th day of August, 1891, *came* the defendant, by counsel, and filed its answer in the office of the clerk of the court aforesaid.

Said answer is in words and figures following, to wit:

Louisville Law and Equity Court.

COMMONWEALTH OF KENTUCKY, &c., Plaintiffs,
vs.
THE LOUISVILLE WATER COMPANY, Defendant. } 4186.

The defendant, The Louisville Water Company, for answer herein, denies that the property described in the petition or any part of the

property described in the petition was in the year 1886 or
6 any year or from since the 22nd day of April, 1882, subject to taxation or subject to assessment for taxation or subject to assessment for the said purposes or for any purpose; and it denies that it was its duty to list said property or any part of said property for said taxation or for any taxation or for the year 1886 or for any year since the 22nd day of April, 1882; and they deny the right, power, or authority of the auditor of public accounts or of the assessor of the city of Louisville or of the sheriff of Jefferson county to assess or to have assessed said property or any part of it for the purpose of said taxation or for any purpose for the said year 1886 or for any year subsequent to the 22nd day of April, 1882; and it denies that on the — day of April, 1891, or at any time prior to the commencement of this action or on the 9th day of January, 1891, the plaintiffs or either of the plaintiffs, in writing or otherwise or at all, reported to Geo. H. Webb, the then clerk of the said county court of Jefferson county, the alleged fact that the said assessor and the said auditor or either the said assessor or said auditor had omitted to assess the said property or any part of it or reported to the said county clerk for assessment or for taxation of said property or any part thereof; and defendant denies that a copy of the alleged report is or ever has been filed or made a part of the petition or marked "A;" and defendant denies that the total tax or any tax due by it to the plaintiff The Commonwealth of Kentucky on all or any part of this said property for the year 1886 or for any year is the sum of $12,875.00 or any part thereof or any sum.
7 They deny that prior to the commencement of this action or on the 9th day of January, 1891, the said Geo. H. Webb, clerk of the county court aforesaid, entered said alleged assessment on the assessor's book of Jefferson county or certified the same to the auditor of public accounts, or certified the same to the plaintiff or either of them for collection or at all, and it denies that the said alleged written report of the plaintiffs or either of them, together with or without the certificate of the said Webb, the clerk as aforesaid, is now or ever has been filed with the petition or as a part thereof or marked "B."

And this defendant denies that upon the — day of January, 1890, or at any time prior to the commencement of this action or at all, that plaintiffs or either of them demanded of this defendant said alleged taxes, or that this defendant refused to pay the same thereof or persisted in said refusal.

This defendant denies that plaintiff The Commonwealth of Kentucky has a lien or ever had a lien on the property described in the petition or any part of it, by virtue of the statute law of Kentucky or at all, to secure such alleged tax or any part thereof.

This defendant denies that the said alleged taxes were ever assessed or levied or demanded in the way alleged in the petition or in any manner whatever.

Paragraph 2. This defendant says that it is a body corpo-
8 rate; that it was created and organized under and in pursuance of an act of the General Assembly of the Common-

wealth of Kentucky approved March 6th, 1854, entitled "An act to incorporate the Louisville Water Company, and various other acts of the General Assembly supplementary thereto and amendatory thereof."

This defendant says that by said charter it was invested with the right, power, and authority to construct, establish, and maintain within or near the city of Louisville reservoirs, engine-houses, pumps, pumping machines, machinery, and engines necessary to constitute a completely equipped water works; to construct and maintain under and on the public ways of the Commonwealth water pipes and mains connecting all parts of the city of Louisville with its reservoirs; to construct and maintain water pipes and mains connecting the reservoir, or writ of *ad quod damnum* — take and hold in fee-simple or for a less estate any and all lands necessary for the convenience management of the concerns of this defendant, to the end that this defendant might at all times be able to furnish and might furnish an abundant supply of pure, fresh, and wholesome water to the inhabitants of the city of Louisville, *that* and to the end that this defendant might be able to and might furnish and supply an abundance of water to flush and cleanse the public ways in the city of Louisville, and to the end that this defendant might be able to and might furnish and supply an abundance of water to the public fire-cisterns and public plugs and hydrants in the city of Louisville as a protection against the loss or destruction by fire of public and private property in the city of Louisville.

9 This defendant says that in pursuance of the provisions *provisions* of its charter and in the exercise of the rights and powers therein conferred upon it, and as indispensable and necessary for the convenient management of its concerns and to carry out and to effectuate the purposes of its incorporation, it did long prior to the first day of January, 1880, acquire in fee-simple and has since held and owned and now holds and owns the property described in the petition.

The defendant says that in the acquisition of the property and all of it described in the petition and in the construction and management of the said reservoirs, coal-houses, stand-pipes, towers, engine-house, chimneys, pump station, pipe, and pipeways and other improvements, all of which are now and have continuously been prior and since January 1st, 1880, necessary and indispensable to the efficient management of its concerns and to the purpose and objects of its incorporation, it has laid out and expended over $2,500,000.00.

This defendant says that it did on and before the 1st day of January, 1880, that it has continuously since said date, and defendant now furnishes an abundant supply *now* pure, fresh, and wholesome water to the inhabitants of the city of Louisville; that it did on and before the 1st day of January, 1880, and has continuously since, and defendant now — supply an abundance of water to flush and cleanse the public ways of the Commonwealth in the city of Louisville; that it did on and before the 1st day of January, 1880, and

has continuously since the said date, and defendant now fur-
10 nishes an abundant supply of water to the public fire-cisterns and public fire plugs and hydrants in the city of Louisville as a protection against loss and destruction by fire of the public and private property in the city of Louisville.

The defendant says that to the end that the property of the Commonwealth located in the city of Louisville and aggregating many millions of dollars in value, and that the property of the citizens of this Commonwealth, so far as located in the city of Louisville and of a value exceeding $100,000,000, might be protected from loss or destruction by fire, it was enacted and provided by the General Assembly of the Commonwealth of Kentucky, in and by an act approved upon the 3rd day of March, 1870, entitled "An act to establish a new charter for the city of Louisville," that the said city of Louisville should, in and by an exercise of the power of taxation which was delegated to it in and by the said act, establish and maintain a fire department, consisting of a chief officer and various subordinate officers under him, and a force known as a fire department of the city of Louisville; and this defendant says that in obedience to the said legislative mandate, as contained in the said act herein referred to, as approved March 3rd, 1870, by the exercise of the power of taxation therein delegated to it said city did, in the year 1870, establish and has continuously since and does now maintain a fire department consisting of a chief, 13 distinct engine-houses, 13 fire-engines, 13 companies of organized men com-
11 manded and *and* controlled by the officers subordinate to the chief of the fire department and at an annual expense to the city of Louisville of over $2,000,000.00

And this defendant further says that by the provisions of the aforesaid act approved March 3rd, 1870, and act prior thereto power was given to and vested in the said city of Louisville by local taxation upon property in the squares contiguous thereto to cause to be constructed a public fire-cistern at and near the intersection of public ways in the said city and at such places as the local legislature of the said city might determine was most advantageous as a means to furnish water to protect public and private property in the city of Louisville against loss or destruction by fire.

And this defendant says that in the exercise of the power conferred by the said act approved March 3rd, 1870, and acts prior and subsequent thereto the said city of Louisville has at various places and at intersections of the public ways in said city determine- by said local legislature to be most advantageous as a means of protection of public and private property from loss or destruction by fire caused to be constructed at least 500 public fire-cisterns at an average cost per cistern of at least $300.00 and which was paid for by local taxation upon the property in the squares contiguous to the point of their construction.

And this defendant says that to render said fire department of any benefit whatever or to make it in any way available for the purpose of its establishment and maintenance it was on and
12 has been ever since the 3rd day of March, 1870, and is now

necessary and indispensable that the said fire-cisterns and said fire plugs and hydrants in the said city should at all times be kept well and abundantly supplied with water.

And this defendant says that prior to the 22nd day of April, 1882, under its charter it had and was given the right to and did exact and receive from the city of Louisville and the said city of Louisville was required to pay for all water furnished and supplied by this defendant to said public fire-cisterns, public fire plugs and hydrants of and in said city of Louisville, and which water so furnished and supplied by this defendant to the said public fire-cisterns, public fire plugs and hydrants of the city of Louisville was, on the 3rd day of March, 1870, and has been continuously since the year 1870 and now is used and kept only and solely as a protection against loss and destruction by fire of the property of the Commonwealth and of all its citizens so far as situated in the city of Louisville.

And this defendant says that at all times since the 3rd day of March, 1870, *and* has and does now cost this defendant annually at least $20,000.00 to furnish with water and to keep supplied with water said public fire-cisterns and the said public fire plugs and hydrants in the said city of Louisville.

And this defendant further says that by the 6th section of its said charter it is expressly provided that in the laying and construction of its pipes and acqueducts in the city of Louisville the same should be so laid and constructed that an abundant supply of water
13 can be obtained therefrom — the extinguishment of fires, and that this defendant should furnish water to the city of Louisville for the extinguishment of fires and cleaning of its streets upon such terms as may be agreed upon between it and the authorities of the city of Louisville, and that this defendant should have the exclusive right to furnish water to the inhabitants of the said city by means of its acqueducts if the authorities of the said city should agree thereto and upon such terms and for such time as might be agreed upon between this defendant and the said city of Louisville.

And this defendant says that it did so construct its pipes and acqueducts in the city of Louisville than an abundant supply of water could be obtained therefrom for the extinguishment of fires, and that it did furnish and supply the city of Louisville with water for the extinguishment of fires and for the cleaning of its streets upon terms agreed upon between it and the city of Louisville, and the city of Louisville did agree that this defendant might have and has had at all times since its incorporation, by agreement with the city of Louisville, the exclusive right to furnish water to the inhabitants of the said city by means of its said pipes and acqueducts upon terms that were agreed upon by and between this defendant and the said city of Louisville.

This defendant says that it is a private corporation, and that all of its capital stock is now and has at all times since the 3rd day of March, 1870, been owned, held, and possessed by the board of commissioners of the sinking fund of the city of Louisville.

14 This defendant says that the board of commissioners of the sinking fund of the city of Louisville is a body corporate duly created and organized and chartered under and in pursuance of the statute of the Commonwealth of Kentucky approved on the 9th day of March, 1867, and entitled "An act to establish the boundaries and taxable limits and to amend the charter of the city of Louisville;" and this defendant says that all of its capital stock consists of 10,000 shares of $1,000.00 each and is now and has at all times since on and before the 1st day of January, 1880, been the property and assets of the board of commissioners of the sinking fund of the city of Louisville.

And this defendant says that by the act creating the said board of commissioners of the sinking fund of the city of Louisville it was provided that the general council of the said city should have no power to pass ordinances or resolutions to diminish the then resources of said board of commissioners of the sinking fund of the city of Louisville as then established until the debts of the said city of Louisville then or thereafter charged or chargeable upon the board of commissioners of the sinking fund of the said city are paid, but that said general council might pass laws to increase the said resources and assets, and that the same resources and assets of the board of commissioners of the sinking fund of the said city from year to year should be sacredly set apart and applied to the payment of the interest and principal of the debts of the said city of Louisville chargeable upon the board of commissioners of the sinking fund of the said city, and to no other use or purpose,

15 until the whole debt of the city of Louisville should be either paid *and* satisfied, including the then present and any after indebtedness of said city.

This defendant, further answering, says that on the 30th day of March, 1880, the bonded indebtedness of the city of Louisville exceeded the sum of $9,000,000.00, and that by an act of the General Assembly of the Commonwealth of Kentucky approved March 30th, 1880, entitled "An act to amend the charter of the city of Louisville," the board of commissioners of the sinking fund of the city of Louisville was charged with the payment of the bonded indebtedness of the city of Louisville, a charge — then exceeded and which has at all times since exceeded and which now exceeds the sum of $9,000,000.00; and this defendant says further that the assets, property, and resources of the commissioners of the sinking fund of the city of Louisville did at no time on or before March 30th, 1880, nor have such assets, property, or resources of the commissioners of the sinking fund of the city of Louisville at any time since March 30th, 1880, been of value exceeding $4,500,000.00.

And this defendant says that one of the securities, assets, and resources of the commissioners of the sinking fund of the city of Louisville which by a special act approved March 9th, 1867, was expressly set aside and appropriated and provided to be sacredly held, and in nowise diminished, for the purpose of paying said bonded indebtedness of the city of Louisville was and is all of the capital stock of this defendant corporation.

16 This defendant further says that the compensation and pay for water furnished and supplied by it to the public fire-cisterns, public fire plugs and hydrants of the city of Louisville amounted to the sum of about $20,000.00 annually and which was the actual cost to this defendant incurred in furnishing and supplying said water, and which amount the said city of Louisville annually paid to this defendant for said water so supplied and furnished to said public fire-cisterns, public fire plugs and hydrants of the said city, and which sum so received annually by this defendant from the city of Louisville constituted and was the assets, property, and resources of the board of commissioners of the sinking fund of the city of Louisville, which the said act approved March 9th, 1867, had provided should not be diminished or impaired, but sacredly set apart to pay the bonded indebtedness, principal and interest, of the said city of Louisville.

And this defendant says that the General Assembly of the Commonwealth of Kentucky, desiring to relieve the property and residents in the city of Louisville of the burden of taxation to supply said water for the fire plugs and at the same time to keep faith with the creditors of the said city, the payment of whose demands was charged upon the board of commissioners of the sinking fund of the said city and for payment of whose debts the assets, property, and resources of the board of commissioners of the sinking fund was sacredly set apart, entered into a contract with this defendant, by and with the consent and approval of the board of commissioners of the sinking fund of the city of Louisville and the said

17 city of Louisville, to the effect that this defendant should furnish and supply, without cost or charge therefor, an abundance of water to the public fire-cisterns, public fire plugs and hydrants in the city of Louisville as a protection against loss or destruction by fire or public and private property in the city of Louisville, and that in consideration thereof and as a compensation therefor this defendant — its property should be exempt from all liabilities to taxation of its property by either the State, county or city.

And this defendant says that in pursuance of the said agreement there was passed by the General Assembly of the Commonwealth of Kentucky an act approved on the 22nd day of April, 1882, entitled "An act to amend the charter of the Louisville Water Company," and by which, among other things, it was enacted that it should be the duty of the Louisville Water Company to furnish water to the public fire-cisterns, public fire plugs and hydrants of the city of Louisville for fire protection free of charge, and that in consideration therefor the Louisville Water Company should be exempt and released from the payment of taxation of any kind of character, State, municipal, and special, and which amendment was submitted to and approved and became a part of the charter of this defendant on the 22nd day of April, 1882—that is, the board of commissioners of the sinking fund of the city of Louisville and the said city of Louisville and this defendant assented and agreed to the said amendment as a part of the charter of this defendant.

And this defendant says that on and ever since the
18 22nd day of April, 1882, it has continuously and free of charge therefor and without any compensation or reward therefor other than an immunity and exemption of and from taxation secured and granted to it by the said act hereinbefore referred to as approved the 22nd day of April, 1882, and at an annual cost to itself of not less than $20,000.00 and to protect the property of the Commonwealth and its citizens and the lives of the citizens and residents of this Commonwealth, so far as located or resident in the said city of Louisville, from loss or destruction by fire furnished and supplied and kept supplied with an abundance of water and does not furnish and supply with an abundance of water all, each, and every public fire-cistern, public fire plug and hydrant in the city of Louisville.

And this defendant says that the said act of the General Assembly of the Commonwealth of Kentucky approved on the 22nd day of April, 1882, and entitled "An act to amend the charter of the Louisville Water Company," and the acceptance of and consent to the same by this defendant and by the said board of commissioners of the sinking fund of the city of Louisville and by the said city of Louisville as a part of the charter of this defendant, constituted and constitutes a contract by and between the Commonwealth of Kentucky and this defendant and each and every one of the creditors of the said city of Louisville the payment of whose debts is charged upon the assets, property, and resources of the board of commissioners of the sinking fund of the city of Louisville, the said city and the board of commissioners of the sinking fund of
19 the city of Louisville, and that the exemption and immunity from and of taxation secured and given by the said act in consideration of the undertaking to and the supplying by this defendant free of charge the public fire-cisterns, public fire plugs and hydrants in the city of Louisville with water as a protection against loss or destruction by fire of the property of the Commonwealth and of its citizens and the lives of its citizens, so far as located and resident in the city of Louisville, is a vested right resting in a contract as aforesaid and is sustained and supported and protected by the Constitution of the United States.

And this defendant says that it did not on or before nor has it at any time since the first day of January, 1880, nor does it now own or control any other property than that described as belonging to it in the petition herein, and that all and every part of which property was on and before and has continuously been since the first day of January, 1880, and is now necessary and indispensable to the efficient management of its concerns and to enable it to furnish the inhabitants of the city of Louisville with pure, fresh, and wholesome water, to enable it to furnish water to flush and cleanse the public ways in the said city of Louisville, and to enable it to supply with water the public fire-cisterns, public fire plugs and hydrants in the city of Louisville as a protection against loss or destruction by fire of the property of the Commonwealth and of its

citizens and of the lives of its citizens so far as situated and resident in the city of Louisville.

20 And this defendant, further answering, says that the alleged and pretended assessment set up and asserted in the petition in this action *have* for *their* authority an act of the General Assembly of the Commonwealth of Kentucky approved upon the 17th day of May, 1886, and entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," and said pretended assessment and levy asserted and set up in the petition and sought to be enforced herein *as* no other countenance or authority than the said act hereinbefore referred to as approved the 17th day of May, 1886.

And the defendant says that the said act of May 17th, 1886, furnishes the only authority for the pretended and alleged assessment and levy set up and asserted in the petition in this action.

And this defendant, relying upon its said contract as hereinbefore set out and as evidenced by the act hereinbefore referred to as approved on the 22nd day of April, 1882, avers and says that in so far as the said act approved on the 17th day of May, 1886, seeks to authorize, justify, or countenance an assessment of or levy of a taxation upon the property of this defendant that said act approved May 17th, 1886, is in violation of the Constitution of the United States, for the reason that the same impairs the obligation of the contract of the Commonwealth of Kentucky hereinbefore set out by the act hereinbefore referred to as approved April 22nd, 1882.

21 And this defendant pleads and relies upon that provision of the Constitution of the United States making void any law passed by the State impairing the obligation of the contract.

Paragraph 3. This defendant, further answering, avers that the cause of action and the accrual of the right on the part of and in favor of the Commonwealth of Kentucky, if such cause of action or right ever did exist, accrued to the said Commonwealth more than five years prior to the commencement of this action, and this defendant pleads and relies upon the statute of five years' limitation.

Wherefore this defendant prays that the petition be dismissed, and that it have judgment for its costs and for general relief.

WILLIAM LINDSAY,
T. L. BURNETT,
LANE & BURNETT,
Attorneys for Defendant.

Charles R. Long says that he is president of the Louisville Water Company, and that he believes the statements in the foregoing answer are true.

—— ——.

Subscribed and sworn to before me this — day of May, 1891, by Charles R. Long.

—— ——.

22 At a court held for the Jefferson circuit court, law and equity division, on February 20th, 1893.

Came defendant, by counsel, and filed demurrer to the petition herein; which demurrer is set to the 27th inst. for hearing.
Said demurrer is in words and figures following, to wit:

Jefferson Circuit Court, Law and Equity Division.

COMMONWEALTH OF KENTUCKY, &c., Plaintiff-,
vs.
THE LOUISVILLE WATER COMPANY, Defendant. } 4186.

The defendant, The Louisville Water Company, demurs to the petition because it does not state facts sufficient to constitute a cause of action.

T. L. BURNETT,
LANE AND BURNETT, *Att'ys.*

At a court held for the Jefferson circuit court, law and equity division, on 27th day of February, 1893.
Came parties by counsel, and, on motion of defendant, leave is given it to withdraw the demurrer to the petition herein, and defendant moved the court to dismiss this cause; to which plaintiff objects, and said motion, being heard, was submitted, and the court, not being advised, takes time.

At a court held for the Jefferson circuit court, law and equity division, on the 13th day of March, 1893.

23 The court, being advised, ordered that the defendant's demurrer to the petition be overruled; to which defendant excepts, and further ordered by the court the motion to dismiss this cause be overruled; to which defendant excepts.

At a court held for the Jefferson circuit court, law and equity division, on the 3 day of April, 1893.
This day came parties, and by agreement the affirmative allegations of the answer are to be taken as controverted of record.

At a court held for the *court* Jefferson circuit court, law and equity division, on the 10th day of April, 1893.
By consent of parties, by counsel, it is ordered by the court that this case be assigned to April 25th, 1893, for oral argument.

At a court held for the Jefferson circuit court, law and equity division, on the 24th day of April, 1893.
On motion of plaintiff, by counsel, it is ordered by the court that this case be passed to the 27th inst.

At a court held for the *court* Jefferson circuit court, law and equity division, on the 25th day of April, 1893.
On motion of defendant, by counsel, ordered by the court that this cause be assigned to May 8th, 1893, for hearing.

24 At a court held for the Jefferson circuit court, law and equity division, on the 28th day of April, 1893.

Came parties by counsel, and this case, being heard, was submitted, and the court, not being advised, takes time.

At a court held for the Jefferson circuit court, law and equity division, on the 8th day of May, 1893.

The court being advised, it is considered that the plaintiff The Commonwealth of Kentucky recover of the defendant, The Louisville Water Company, the sum of $12,875, with interest from this date; and it is further considered that the plaintiffs recover their costs herein against the defendant; for all of which they may have execution.

To all of which the Louisville Water Company excepts and prays an appeal to the court of appeals; which is granted.

25 *Plaintiff's Depositions.*

Deposition of Henry A. Bell. Filed May 3rd, 1893.

Note Book 347, Journal —.

The deposition- of Henry A. Bell and John T. Tarleton, taken on the 18th day of February, 1893, at the office of Clarence E. Walker, at Louisville, county of Jefferson and State of Kentucky, to be read as evidence on behalf of the plaintiff in an action between H. A. Bell, sheriff, &c., plaintiff, and The Louisville Water Company, defendant, now pending in the law and equity division court, Jefferson circuit court, both parties, by attorney, being present.

Henry A. Bell, being duly sworn and examined by Mr. James P. Helm as attorney for the plaintiff, deposed as follows:

Q. 1. What is your occupation?

A. Sheriff of Jefferson county.

Q. 2. When did you qualify?

A. January, 1891.

Q. 3. The last of January?

A. The first Monday in January—not the 1st day of January.

Q. 4. State whether or not the assessment made in this case was made by you. If so, when?

A. About the 9th of January, 1891.

Q. 5. Did you make that written report to the clerk?

26 A. Yes, sir; to the county clerk.

Q. 6. What did the clerk do with it?

A. Put it on the list of Edwards' Pond and Gilman's Point precinct, 1890.

Q. 7. Have you a certified copy of that assessment made by the clerk?

A. I think I have.

Q. 8. Please file it and make it a part of your deposition.

A. The original of this is filed with the auditor.

Q. 9. Please file a copy of the assessment, then.

A. I file a copy of it as part of my deposition, marked Exhibit H. A. B. No. 1.

Q. 10. Were these taxes demand- of the Louisville Water Company?

A. I sent one of my deputies to demand this bill.

Q. 11. Was that amount demanded of them?

A. Yes, sir.

Q. 12. Will you file a copy of the bill upon which the demand of payment was made?

A. Yes, sir; I file it as part of my deposition, marked Exhibit H. A. B. No. 2.

Q. 13. Did they refuse to pay?

A. Yes, sir.

Q. 14. Was that demand refused?

A. Yes, sir; I looked at it in the books this morning.

Cross-examined by Maj. LANE:

Q. 15. This paper marked H. A. B. No. 1, you say, is a
27 copy of the assessment as made by you?

A. Yes, sir.

Q. 16. Was it made on paper similar to this one?

A. Yes; that is my recollection of it.

Q. 17. Is this a copy of that paper or a copy of the entry in the assessment books?

A. It is a copy of that paper.

Q. 18. It is not a copy of the entry in the assessment book?

A. The copy in the assessment book is the same as that.

Q. 19. Did you compare the two?

A. I read this over this morning and read that over the other day. I read it over in the book and saw the paper at the auditor's office the other day.

Q. 20. The original paper?

A. Yes, sir.

Q. 21. What time in the day was it that you made that assessment?

A. I do not know the time it was made.

Q. 22. What day of the month was it made?

A. To the best of my belief it was made January 9th.

Q. 23. You don't remember the time of day?

A. No, sir. I have written on this bill in my own writing, "January 9th, 1891."

By Mr. HELM:

Q. 24. It was made between the 1st and the 9th?

A. It was made between the 1st and the 9th, and I think it was made on the 9th.

28 Q. 25. To what clerk did you make the report?

A. To the county clerk.

Q. 26. Did you make it to George Webb in person or to a deputy?

A. I don't know about that. I think, however, that Mr. Webb and Mr. Ramsey were both present.

Q. 27. When did the clerk record that assessment you made?
A. My recollection is that he recorded it at once.
Q. 28. Did you see him record it at once?
A. No, sir; I did not see him record it.
Q. 29. You don't know that it was recorded on the 9th?
A. I could not say positively, but that is my recollection. My recollection is that it was recorded right immediately; that he went right off and had one of the men out it on the book the very day I gave it to him.
Q. 30. Which deputy was it?
A. I do not know.
Q. 31. Did you put it on the assessment book for the year 1886?
A. No, sir; on the book for 1890.
Q. 32. The assessment book for 1890 contained an assessment of the property of the water company?
A. I am not certain.
Q. 33. If it was on the assessment book for 1890 there was two assessments against the water company?
A. I don't remember whether the water company was assessed for 1890 or not. My belief is that it was. It is customary to put them on the list on the assessor's books. That is in the hands
29 of the assessor.
Q. 34. It was not put on the assessment book for 1886?
A. No, sir.
Q. 35. You do not know of your own knowledge that it was recorded on the 9th of January, 1891?
A. The clerk told me that he would record it immediately. I did not see him record it, but he reported to me that he had recorded it.
Q. 36. What sort of a report did he make, verbal or written?
A. Verbal.
Q. 37. What report did the clerk make to you on the 9th of January, 1891?
A. In reference to this matter?
Q. 38. What paper was given you?
A. I think he returned to me the original assessment and I mailed it to the auditor, the assessment we made, certifying it had been recorded.
Q. 39. Did you have any paper in your hand given to you on the 9th of January, 1891, by the clerk?
A. If I had any it was that paper.
Q. 4-. Have you any record in your office to show that you had it?
A. No, sir; we put it on the book we had in our office. I see it is on the book. I don't know who put it on, but I believe I put it there myself.
Q. 41. Then you did keep a memorandum?
A. We put it on that book.
30 Q. 42. Was that made the 9th of January, 1891?
A. I am not certain about that.
Q. 43. Did you put it on the book the 9th of January, 1891?

A. I am not certain about that. I either put it on the book or a copy of it. That book that we call additional assessment book; it is on that.

Q. 44. That is a book made out by either you or your deputies?

A. Yes, sir.

Q. 45. And not entirely by yourself?

A. No, sir.

Q. 46. That is a private book of your own?

A. Yes, sir.

Re-examined by Mr. HELM:

Q. 47. Examine the petition and note the fact that it was filed on the 9th of January, 1891.

A. Yes, sir.

Q. 48. By way of refreshing your memory, I will ask you to state whether or not you did not give me this identical paper to file with the petition before the petition was filed, and I ask you to read the petition and see if it is not stated there that it was filed with the petition.

A. Since you mention it, I believe that is so. I see that Ramsey's name is signed there.

Q. 49. State whether or not you were not advised at the time what would be the limitation and whether or not the filing and the whole matter was not completed and the demand made before the bring- of the suit.

31 A. Yes, sir; I was advised that it had to be made at that time for it to be done.

Q. 50. Immediately for the thing to be completed?

A. For the whole thing to be completed in one day.

Q. 51. With that information, state whether or not you did not see to it that the thing was completed in one day.

A. Yes, sir.

Q. 52. Everything necessary?

A. Yes, sir. I don't suppose that I saw the clerk put it down, but I told them so.

Recross-examined by Maj. LANE:

Q. 53. Who made the demand for the taxes?

A. John Tarleton.

Q. 54. You don't know whether he made the demand or not?

A. He told me he had.

Q. 55. Did you make any demand yourself?

A. No, sir.

Q. 56. You do not know that any demand was made?

A. No, sir.

Deposition of John Tarleton. Filed May 3rd, 1893.

JOHN T. TARLETON, called for the plaintiff, being duly sworn and examined by Mr. Helm, deposed as follows:

Q. 1. State your name, age, residence, and occupation.
A. John T. Tarleton; deputy sheriff.
Q. 2. Were you a deputy sheriff between the 1st and 10th of January, 1891?
A. I was.
32 Q. 3. Under Henry Bell, sheriff of Jefferson county?
A. Yes, sir.
Q. 4. State whether or not you ever made a demand on the Louisville Water Company for the taxes for 1886; and, if so, if you can, state when you made that demand.
A. I made the demand, but I cannot say exactly when I made it.
Q. 5. Can you state whether you made that demand before the bringing of this suit, on the 9th of January?
A. Yes; I can state that I made the demand before the bringing of this suit.
Q. 6. On whom did you make that demand?
A. On Charles R. Long, president of the Louisville Water Company.
Q. 7. Did he refuse to pay it?
A. Yes, sir.

Cross-examined by Mr. LANE:

Q. 8. Where was Charles R. Long when you saw him?
A. The best of my knowledge is that he was in the sitting-room of his residence, on Broadway.
Q. 9. Do you remember what time of day it was?
A. No, sir.
Q. 10. Was it in the morning or in the evening?
A. In the evening, I think.
Q. 11. About what time?
A. I cannot say to save my life.
Q. 12. Was it in the afternoon or in the evening after supper that you saw him?
33 A. I could not say.
Q. 13. You just made a demand on him, and that is all you know?
A. Yes; and that it was before the bringing of the suit.
Q. 14. When was the suit filed; do you remember?
A. No, sir.
Q. 15. Were you present when it was filed?
A. No, sir.

Re-examined by Mr. HELM:

Q. 16. How do you know the demand was made before the suit was filed?

A. Simply from the fact that you told me that you could not file it until I made the demand, and then I made it and came back and reported to you that I had made it.

Q. 17. And then did I start off to file the suit?

A. Yes; to the best of my knowledge.

STATE OF KENTUCKY, }
County of Jefferson. }

Law and Equity Div. Jeff. Circuit Court.

I, Clarence E. Walker, official reporter for said court, certify that the foregoing deposition- of Henry A. Bell and Jno. T. Tarleton — taken pursuant to agreement before me at the time and place and in the action mentioned in the caption; that the said witness- *was* first duly sworn by me that the testimony *he* should give in the action should be the truth, the whole truth, and nothing but
34 the truth; that said depositions were first taken by me in shorthand and a full and accurate transcript of the same made by me; that the signature- of the witness- to said depositions respectively and the reading of the same to them were waived by counsel; that plaintiff appeared by Mr. Helm and defendant Maj. Lane.

Witness my hand this 2 day of May, 1893.

CLARENCE E. WALKER,
Official Reporter.

Exhibit H. A. B. No. 1, filed with the deposition of H. A. Bell, is in words and figures following, to wit:

Additional list on revenue account 1886 taken by H. A. Bell, sheriff of Jefferson county, and recorded in the county clerk's office and certified back to the sheriff of said county for collection in accordance with chapter 1233, approved May 17, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky."

Read the law on the back of this blank.

No., name, year, precinct, description of propt., valuation, am't of.—Louisville Water Co., 1886, 88.56 acres of land in Edwards' Pond & Gilman's magisterial dist. of Jefferson county, Ky., near the land of Callahan...	8800
28.52 acres of land near the lands of F. Wall, Sr.....	2800
1.28 acres n'r Callahan's tract.....	200
100 acres & 10 acres & 2.49 — in the Crescent Hill reservoir tract.....	1300
35 A tract of land purchased of H. A. Meyer near the Callahan tract.....	300

Two certain lots of land in Louisville, Ky., on the east side of 3rd street between Green and Walnut, having a front on 3rd St. of 52½ x 234 ft., the other fronting the west side of an alley bet. 2 & 3 & Green & Walnut, having a front on said alley of 20 feet & a depth of 120 ft., being lots #12 & 10 of bl'k 41 on city map on file in the assessor's office of the city of Louisville 10000

Also all the pipes and mains running to and from said city & under the streets and alleys of said city; also all buildings, reservoirs, engines, pumping stations, &c., belonging to the Louisville Water Co., of the total value of..... 2466600

2500000

@ 51c. p'r 100..... 12,75000

A true copy of assessment.
Attest:

GEO. H. WEBB,
Clerk Jeff. Co. Court,
By JNO. M. RAMSEY, *Dep. Cl'k.*

Totals, —.

Sheriff sign at the end of report.

——— ———,
Sheriff —— County.

STATE OF KENTUCKY, }
—— *County,* } *sct:*

I, —— ——, clerk of —— county court, hereby certify that
36 the foregoing lists of property, omitted by the assessor in the tax assessment for 18—, were assessed and reported to me by —— ——, sheriff of —— county, and recorded in my office as prescribed by law.

Witness my official signature this — day of ——, 18—.

——— ———,
Clerk — County Court.

CHAPTER 1233.

An act to amend the revenue laws of the Commonwealth of Kentucky; approved May 17, 1886.

Article VI.

22. When it shall be known to the sheriff that any person has failed to give in a list of his taxable property, or any portion thereof, in any year, he shall report such person to the county clerk, to be dealt with, fined and taxed as delinquents reported by the assessor. No sheriff or assessor shall be liable to cost in proceedings against delinquents reported by them.

23. Any person who has failed to give in his list of *table* property,

in whole or in part, because he was not called upon by the assessor, may, at any time, and it is hereby made his duty, after the assessor has returned his tax book, to list the same with the county clerk, who, on taking the same, shall be governed by the law regulating the duty of the assessor.

25. It shall be the duty of the sheriff to report to the county clerk all lists or parts of lists of property which may, for any year or years, have been omitted by the assessor, and all property which corporations may have omitted for any year or years to have
37 listed with the auditor, and said clerk shall enter the same on the assessor's books for his county, and certify the same to the auditor on or before the last day of January in each year; and the said sheriff shall have, as compensation for said assessment, twenty-five cents, and, in addition to the fee, twenty-five per cent. on the taxes realized on said assessment. But this section does not include property erroneously described by the assessor.

26. No sheriff shall receive taxes on property until the same has been entered upon the assessor's books and certified to the sheriff by the county clerk. For each violation of this section by sheriff or collector, they shall be fined twenty dollars, which may be recovered by the Commonwealth by motion in the county court or by indictment in the circuit court. The county attorney, if he prosecutes, shall have twenty per cent. of the fine. Nothing in this section shall be construed to give a portion of the fine under this section to the clerks.

Exhibit H. A. B. No. 2, filed with the deposition of H. A. Bell, is in words and figures following, to wit:

The Louisville Water Company to State tax 1886.

88.56	acres land		8800
28.52	"	"	2800
1.28	"	"	200
2.49	"	"	300
100	"	"	10000
10	"	"	1300
37½			
52½ x 234 feet E. 3rd Green & Walnut			10000
Pipes, mains, & reservoir			2466660
Total			2500000
Tax			$1275000

Louisville Jan. 9, 1891.
[Receipt payment.

H. A. BELL, *S. J. C.*]*

[* Words enclosed in brackets erased in copy.

38 *Defendant's Deposition.*

Deposition of Charles R. Long. Filed April 10th, 1893.

Jefferson Circuit Court, Law and Equity Division.

COMMONWEALTH OF KENTUCKY and H. A. BELL, Sheriff, Plaintiffs,
vs.
THE LOUISVILLE WATER COMPANY, Defendant. } =4186.

The deposition of Charles R. Long, taken on the 21st day of March, 1893, 12.30 o'clock a. m., at the law office of Lane and Burnett, cor. Centre & Green Sts., Louisville, Ky., to be read as evidence in behalf of defendant in an action between The Commonwealth of Kentucky, &c., plaintiffs, and The Louisville Water Company, defendant, pending in the Jefferson circuit court, law and equity division.

CHARLES R. LONG, being duly sworn and examined by H. M. Lane, testified as follows:

Q. 1. State your name, residence, and occupation or profession.
A. Charles R. Long; 109 E. Broadway, Louisville, Ky.
2. Have you any connection with the defendant, The Louisville Water Company?
A. President.
3. How long have you been such?
A. About 17 years.

39 4. State whether or not the Louisville Water Company furnished water to the public fire-cisterns and public fire plugs and hydrants of the city of Louisville for fire protection free of cost during the entire period extending from April 22nd, 1882, up to the 1st day of January, 1887.

A. We have rendered such service to the city as indicated free of charge during that period.

5. What would be the actual cost per annum for furnishing the water free of charge during that interval of time—what was the cost to the Louisville Water Company?

A. It would be almost impossible to fix the actual cost to the water company.

6. About what would be the cost?

A. There is no way of ascertaining the amount of water these cisterns have used, from the simple fact that they have no meters attached to them.

7. In your best judgment would it run up to $15,000.00 a year?

A. I think not. I would say it would cost the water company in the neighborhood of twelve or eighteen thousand dollars a year, actual cost.

8. That is as near as you can say the actual cost was from the 22nd of April, 1882, up to the 1st of January, 1887?

A. Yes, sir.

9. State whether or not the property described in the pleadings in this case is necessary and indispensable to the convenient management of the concerns of the company.

A. All the property owned by the water company is necessary and needful for the purposes of the company in conducting its business.

40 10. Could it carry on its business without the property described in the pleadings in this case?

A. It could not conveniently do so nor successfully.

11. About what did it cost the water company to construct its entire plant of reservoirs and pipeways in the city?

A. It has cost the company in the neighborhood of three million dollars.

12. State what connection this water has that is furnished by the Louisville Water Company to the city of Louisville with the fire department of the city.

A. The service rendered by the water company to the city is an absolute necessity for the maintenance of the fire department of the city of Louisville because it supplies direct all the water needed for the public fire service.

13. State whether or not the public fire service of the city of Louisville could be conducted and carried on without this supply of water furnished by the water company.

A. It could not to any extent.

14. State, as near as you can, the value of the property in the city of Louisville that derives protection from destruction by fire.

A. I think it would run up in the neighborhood of one hundred millions of dollars.

15. Do you know or have you any idea of the number of fire-cisterns in the city of Louisville?

A. 700 fire cisterns and public hydrants.

16. At what points are they located, not specifically, but generally?

41 A. They are located generally over the city in the public ways of the city under and by the direction of the general council of the city.

17. What persons or corporations own the stock of the Louisville Water Company?

A. The Louisville sinking fund—the board of commissioners of the sinking fund own all the stock with the exception of two shares.

18. What is the value of those shares, the nominal value?

A. Par value, $100.00 each.

19. What connection does the sinking fund have with the city of Louisville? What office does it perform in the local government of the city?

A. It takes care of the bonded indebtedness of the city, makes provision for its payment, and collects the revenues belonging thereto.

20. Mr. Long, when did you first hear of the assessment for the year 1886 of the property and effects of the Louisville Water Company for taxation by the State?

A. I never heard of any assessment being made at all. The first knowledge I had that there was any claim against the water company for taxes for that year was presented to me—I made a memorandum at the time—was presented to me January 9th, 1891, in the shape of a tax bill.

21. By whom was it presented; at what time of the day?

A. By one of the deputies, claiming to represent H. A. Bell, sheriff, and was presented about 5 o'clock on the evening of January 9th, 1891.

42 22. Where were you at the time it was presented?

A. At the water office, in the board of directors' room.

23. Was that after the business hours?

A. Yes, sir; after public hours.

24. Were the banks closed after that hour?

A. The banks were closed—that is, so far as public business was concerned. Here is a copy of the tax bill they presented that day.

25. Mr. Long, why was it that the defendant in this case furnished the water free of charge for the time you have named?

A. In consideration of the fact that the water company was to be exempt from State and municipal taxation.

26. From April 22nd, 1882?

A. Yes, sir.

27. Do you know what time the court-house closes—what time of the day?

A. I do not. The impression I have it closes at five o'clock, as far as its offices are concerned.

Cross-examined by J. P. HELM, for plaintiff:

28. How do you arrive at the cost of furnishing that water, Mr. Long?

A. The only method of arriving at the cost is to approximate the quantity of water used, and the cost of the water per hundred gallons is between five and six cents.

29. How do you arrive at the aggregate amount of water that is delivered through the medium of the public fire plugs, cis-

43 terns, and hydrants?

A. We cannot arrive except by approximation. There are no meters. When a fire takes place the use of the water is simply immense. It takes all the main will supply.

30. How do you estimate the amount?

A. We are unable to estimate it except by general approximation as to what has been the possible cost.

31. Do you know the amount?

A. I did not come here to state figures. The only way to approximate that will be to make an estimate. We could not get the amount unless we had meters on all of them.

32. Have you ever made an estimate of the total amount of water used by the fire plugs and hydrants?

A. I have made an estimate of the cost as indicated.

33. That related to the cost of delivery all over the city?

A. Yes, sir.

34. Do you know the estimate of the cost of water used for this purpose furnished free?

A. No, sir.

35. I wish you would find out about what estimate of the approximate amount of water is used for this purpose and how you arrive at that.

A. I have just said all there was to say on the subject.

36. Do you decline to say any more?

A. It is impossible to state the amount of water used for fire cisterns during a fire and the amount of water used or water wasted by leaky cisterns in this city.

By Judge BURNETT:

37. Do you know the quantity used by the city?

44 A. Twelve to sixteen millions of gallons. We know how much is consumed by meter measurement, and the balance is consumed by other consumers.

By Mr. HELM:

38. How much—have you the figures convenient?

A. No, sir; I have made no examination of those figures recently.

39. Did you ever make a calculation as to what the proportion of water furnished for fire protection bears to the total amount furnished?

A. No, sir.

40. Have you any means of making an estimate upon that?

A. We have not. We can make no estimate except by approximation.

41. How do you arrive at that?

A. Only by the fact that there is a three or four inch service to the cistern, and that the volume of water furnished through that service constantly is a very large consumption of water. Our engineer can give you the approximate amount. These cisterns have large connections and when being supplied with water take all the supply of the public mains.

42. You furnished this free of charge, the water for public fire cisterns, plugs, and hydrants?

A. Yes, sir.

43. Is this water used for any other purpose from these mains?

A. It is used to flush the streets and gutters.

45 44. And that's all?

A. And the walks are washed when they need it.

45. None of this water is used for private consumers?

A. Only when it is stolen.

46. And there is a great deal of that done, you suspect?

A. More than you would suppose.

47. The city furnishes the water free of charge to the fire plugs and cisterns?

A. It has made no charge yet.

Signature waived.

STATE OF KENTUCKY, }
County of Jefferson. }

I, F. Hewitt Weller, examiner in and for the county of Jefferson, State of Kentucky, do certify that the foregoing deposition of Charles R. Long was taken before me at the time and place and for the purpose stated in the caption; that the said witness was duly sworn, before giving it; that it was written by me in his presence, and that the reading of same to witness and his signature thereto were waived by consent of counsel, all parties being present by counsel.

Given under my hand this 10th day of April, 1893.

F. HEWITT WELLER,
Ex., Jeff. Co., Ky.

46 STATE OF KENTUCKY, }
Jefferson County. }

Jefferson Circuit Court, 30th Judicial District.

I, John S. Cain, clerk of the circuit court, do hereby certify that the foregoing 45 pages contain a full, true, and complete transcript of the record and proceedings had in the Louisville law and equity court and in the Jefferson circuit court, law and equity division, in an action lately pending therein wherein Commonwealth of Kentucky is plaintiff and Louisville Water Company is defendant, # 4186, as the same appears of record and on file in my said office.

Witness my hand this 28 day of June, 1893.

JNO. S. CAIN,
Clerk Jefferson Circuit Court.

Endorsed upon the foregoing transcript is the following statement:

Court of Appeals.

LOUISVILLE WATER CO., Appellant, }
vs. }
COMMONWEALTH OF KENTUCKY, Appellee. }

This appeal is from the judgment of the law & equity division of the Jefferson circuit court, rendered May 8, 1893, found on page 24 of the transcript. Appeal was prayed and granted in the court below. No summons or warning order necessary.

T. L. BURNETT,
LANE A BURNETT,
Att'ys for Appellant.

47 Afterwards, at a court of appeals held in and for the Commonwealth of Kentucky, at the capitol, in Frankfort, on the 28th day of September, A. D. 1893, the following order was entered:

Submission.

Jefferson.

"LOUISVILLE WATER CO., Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

It is ordered that this cause be submitted."

Afterwards, at a court of appeals held in and for the Commonwealth of Kentucky as aforesaid, on the 27th day of March, A. D. 1896, the following orders and judgment were entered:

Judgment.

LOUISVILLE WATER CO., Appellant.
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from the Jefferson circuit court, law and equity division.

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its cost expended herein.

On the same day the court, through Judge Guffy, delivered the following opinion:

48 LOUISVILLE WATER CO., Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

This appeal is prosecuted by Louisville Water Company from a judgment rendered by the Jefferson circuit court, law and equity division, in the suit of the Commonwealth of Kentucky and H. A. Bell, sheriff of Jefferson county, against Louisville Water Company to recover for taxes due for the year 1886.

The appellant interposed several defenses, all of which were deemed insufficient by the court below, and appellant now insists that the court below erred in rendering judgment against it and asks a reversal.

The authority for reporting the tax-list to the clerk of the county court is to be found in section 25, article 6, chapter 92, of the General Statutes, commonly called the Hewitt bill. The material part of the section is as follows: "It shall be the duty of the sheriff to report to the county clerk all lists or parts of lists of property which may for any year or years have been omitted by the assessor and

all property which corporations may have omitted for any year or years to have listed with the auditor, and said clerk shall enter the same on the assessor's book for his county and certify the same to the auditor on or before the last day of January in each year."

The law does not specify how or in what manner or form the report shall be made, and as it appears that the clerk accepted
49 the report and certified same, as required by law, the report of the sheriff and certificate of the clerk must be held sufficient for the purposes of this action.

The act of 1882, exempting appellant from the payment of taxes, had been decided to be unconstitutional and void in case of William Clark, sheriff, *vs.* Louisville Water Company, 90th Kentucky, 515; hence that act cannot be relied on for reversal. The question of the constitutionality of that act was not decided by the Supreme Court of the United States; therefore the decision in case of the appellant *vs.* the Commonwealth, 143 U. S, 1, has no application to this case. The plea of limitation cannot avail. The suit was brought and summons issued January 9th, 1891, which, by the express provision of the code of practice, is made the commencement of the action, and this court has often so held; hence the decision of the courts of other States as to what constitutes the commencement of an action can have no application to the case at bar, and, besides, it might well be held that the statute did not begin to run until the expiration of the time during which the assessor might have made the assessment, which in 1886 would have been the last of April.

The act of 17th of May, 1886, before referred to, was, as is well known, a revenue bill, and the object was to increase the revenues, not to decrease them, and it expressly excepted all obligations incurred under existing laws from repeal. It is therefore clear that if appellant had become liable for the tax for 1886 the act *supra* did not release it from such liability, nor can we agree with appellant that the act *supra* is only prospective. The evident
50 purpose of the act was to confer power upon the sheriff greater than he had theretofore been invested with, and there is nothing in the act to authorize the conclusion that the power and duty devolved on the sheriff had reference only to the future. Such an intent would not have been consistent with the object of the act.

Appellant insists that the revenue law of 1892 repealed the act of 1890, which authorized the bringing of such suits as this. We do not concur in appellant's construction of the act of 1892. We do not think it was the intention of the legislature to repeal the act of 1890; but if such was the legislative intent, the general law as to construction of statutes provided that "No new law shall be construed to repeal a former law as to any offense committed against the former, nor as to any act done, any penalty, forfeiture, or punishment incurred, or any right accrued or claim arising under the former law, or in any way whatever to effect any such offense or act so committed or done, or any penalty, forfeiture, or punishment so incurred, or any right accrued or claim arising before the new law takes effect."

It is certain that the claim in suit existed before the passage of the act of 1892, and the right to sue therefor had accrued and in fact had been exercised before the enactment of the law of 1892; hence the claim and the right to sue and recover therefor was wholly unaffected by the act of 1892. The question as to whether it was a vested right that could not have been repealed or taken away is not the question before us for decision. The simple question is, Did the act of 1892 have the effect contended for by appellant? We
51 think not. We think it fair to presume that the depositions in the case were properly filed and considered; if such was not the case, appellant should, by proper proceedings in the court below, — sought a correction of the error, if it deemed the same prejudicial, and if the failure to file the exhibits referred to in the petition was detrimental to appellant that could have been remedied by rule in the court below. We have read with care the very excellent and exhaustive briefs of appellant as well as the entire record, and are of the opinion that the judgment of the court below is sustained by the law and facts, and the said judgment is affirmed.

Afterwards, on the 5th day of May, A. D. 1896, the appellant and plaintiff in error filed in the clerk's office of said court of appeals a copy of its writ of error, the original of which here follows:

52 *Writ of Error.*

UNITED STATES OF AMERICA, } *ss*:
District of Kentucky, }

The President of the United States of America to the honorable the judges of the court of appeals of the State of Kentucky, Greeting:

Because *of* the record and proceedings and also in the rendition of the judgment of a plea which is in said court of appeals, before you or some of you, being the highest court of law or equity of the said State of Kentucky in which decision could be had in the said suit between The Louisville Water Company, appellant, and The Commonwealth of Kentucky, appellees, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by its com-

53 plaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, the 5th day of May, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twentieth.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED,
Clerk of the Circuit Court of the United States, District of Kentucky.

Allowed by chief justice of the court of appeals of the State of Kentucky.

WILL S. PRYOR,
Chief Justice Ky. Ct. Appeals.

[Endorsed:] 1896, May 5, filed. Att.: A. Addams, C. C. A.

54 On the same day the appellant and plaintiff in error filed its assignment of errors, which is in words and figures following, to wit:

Court of Appeals.

THE LOUISVILLE WATER COMPANY, Plaintiff in Error,
vs.
THE COMMONWEALTH OF KENTUCKY, Defendant in Error. } 104.

The Louisville Water Company, plaintiff in error, comes and complains of the judgment rendered herein by the court of appeals of the Commonwealth of Kentucky. The said court had jurisdiction of the subject-matter of the litigation and is the highest court in said Commonwealth having such jurisdiction, and its said judgment is final, and for cause of complaint said plaintiff in error, The Louisville Water Company, assigns errors as follows:

First. The court of appeals erred in affirming the judgment of the Jefferson circuit court, law and equity division, heretofore known and styled the Louisville law and equity court.

Second. The court of appeals erred in adjudging that the properties of the plaintiff in error were subject to taxation by the Commonwealth of Kentucky at any time between the 22nd day of April,

1882, and the 15th day of September, 1886, or that the properties of the plaintiff in error could be so subjected without violating the Constitution of the United States.

55 Third. The court of appeals erred in failing and refusing to reverse the judgment of the Jefferson circuit court, law and equity division, heretofore known and styled the Louisville law and equity court, and in failing to adjudge that the properties of the defendant in error were exempt from liability to taxation by the Commonwealth of Kentucky prior to the repeal on the 15th day of September, 1886, by an act entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17th, 1886, of the provisions of an act approved April 22, 1882, entitled "An act to amend the charter of the Louisville Water Company."

Fourth. The court of appeals erred in adjudging that the act of the General Assembly of the Commonwealth of Kentucky approved on April 22nd, 1882, entitled "An act to amend the charter of the Louisville Water Company," after being accepted by the plaintiff in error and its conditions performed by the plaintiff in error in the supplying of water for public purposes to the city of Louisville free of charge up to September 15th, 1886, did not constitute a legal, valid, and enforcible obligation and contract between the Commonwealth of Kentucky and the plaintiff in error.

Fifth. The court of appeals erred in adjudging that the said contract was not supported by a legal and valuable consideration upon the part of the plaintiff in error.

Sixth. The court of appeals erred in adjudging that the authority exercised under, in the name and for the benefit of, the Commonwealth of Kentucky in the assessment of the property of the plaintiff in error for taxation and in attempting to enforce the collec-

56 tion of such taxes does not impair the obligation of the contract involved in the acceptance by the plaintiff in error of the provisions of the act approved April 22nd, 1882.

LOUISVILLE WATER COMPANY,
By T. L. BURNETT,
LANE & BURNETT, *Attorneys.*

And on the same day the appellant and plaintiff in error filed its bond in words and figures following, to wit:

Supersedeas Bond.

COMMONWEALTH OF KENTUCKY:

LOUISVILLE WATER COMPANY, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Know all men by these presents that we, The Louisville Water Company, principal, and Charles R. Long, surety, are held and firmly bound unto the Commonwealth of Kentucky in the sum of

$25,000.00, to be paid to the said Commonwealth of Kentucky, and to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this the — day of May, 1896 A. D.

Whereas the above-named Louisville Water Company hath prosecuted a writ of error to the Supreme Court of the United
57 States to reverse the judgment rendered in the above-entitled suit by the court of appeals of Kentucky:

Now, therefore, the condition of this obligation is such that if the above-named Louisville Water Company shall prosecute its writ of error to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall remain and be in full force and virtue.

LOUISVILLE WATER COMPANY, [L. S.]
By CHAS. R. LONG, *President.* [L. S.]
CHAS. R. LONG. [L. S.]

Sealed and delivered and taken and acknowledged before me on this the 4 h day of May, 1896, by the Louisville Water Company and Charles R. Long.

WM. J. INGRAM, *N. P., J. C.*

Examined and approved by me this the 5 day of May, 1896.

WILL S. PRYOR,
Chief Justice of the Court of Appeals of Kentucky.

58 COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, in obedience to the writ of error herewith returned, a copy of which is on file in my office, hereby certify that the preceding fifty-seven (57) pages contain a true, full, and complete transcript of the record and proceedings had in said court of appeals in the case of Louisville Water Company, appellant, against The Commonwealth of Kentucky, appellee, as the same appear of record and on file in my office.

Seal Court of Appeals, Kentucky.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 8th day of May, A. D. 1896.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

Fee for this transcript, $18.25.

59 UNITED STATES OF AMERICA, } 88:
District of Kentucky, }

To the Commonwealth of Kentucky, acting through W. O. Bradley, its governor; W. S. Taylor, its attorney general, and James P. Helm and Helm — Bruce, special counsel of the Commonwealth of Kentucky:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington, in the District of Columbia, not exceeding thirty days from this date, pursuant to writ of error filed in the clerk's office of the court of appeals of Kentucky, wherein The Louisville Water Company is the plaintiff in error and you are the defendant in error, to show cause, if any shall be, why the judgment in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. S. Pryor, chief justice of the court of appeals of Kentucky, this the 5 day of May, in the year of our Lord eighteen hundred and ninety-six.

WILL S. PRYOR,
Chief Justice of the Court of Appeals of Kentucky.

60 [Endorsed:] Ent. 362. Serve Taylor, Bradley, Helm & Bruce, J. P. Helm.

Executed this paper by delivering a true copy thereof to W. O. Bradley, governor of Kentucky, at Frankfort, on the 7th of May, 1896, and mailed a copy thereof to the within-named W. S. Taylor, att'y gen'l of Kentucky, as he could not be found in his office at Frankfort this May 7th, 1896.

JAMES BLACKBURN,
U. S. Marshal.

Put my fees.

Executed on J. P. Helm May 8, '96, at Louisville by delivering to him two copies of the within. Executed on Helm — Bruce 5, 8, '96, by delivering copy of within to J. P. Helm, who accepted this service.

JAMES BLACKBURN, *U. S. M.*,
By S. E. BLACKBURN, *D. M.*

Mars. fees	6 00
Mileage	3 30
	9 30

Endorsed on cover: Case No. 16,301. Kentucky court of appeals. Term No., 525. The Louisville Water Company, plaintiff in error, *vs.* The Commonwealth of Kentucky. Filed May 16, 1896.